IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

***O R D E R***

S.B. CRIMINAL REVISION PETITION NO.80/1999

MANOHAR LAL Vs. THE STATE OF RAJASTHAN & ORS.

DATE: 11.01.2007.

**HON'BLE MR. K.S. RATHORE, J.**

Mr. Virendra Singh for
Mr. A.K. Gupta for the petitioner.
Mr. Ashwani Kumar Sharma, P.P. For the State.

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This revision petition under Section 397 r/w Section 401 Cr.P.C. is directed against the order of the Special Judge (Communal riots/ Man Singh Murder Case), Jaipur dated 13.01.99 and 15.01.99 passed in Criminal Appeal No. 9/99, whereby the appeal filed by the respondent Nos. 2,3 and 4 was restored and the respondents were acquitted.

Brief facts of the case are that the Court below vide its judgment dated 12.01.99 dismissed the appeal for non-prosecution. The trial Court has committed an error in dismissing the appeal for non-prosecution. The trial Court is competent to decide the appeal on merit but cannot dismiss the same for non-prosecution. Further the trial Court has committed an

error vide judgment dated 13.01.99 by restoring the same and vide judgment dated 15.01.99 the appeal of the accused-respondents has been accepted and they have been discharged from the offence under Section 323 IPC, against which the present revision petition is preferred by the complainant-petitioner.

Learned counsel for the petitioner submits that as per Section 362 Cr.P.C., the Court cannot alter or review the judgment except to correct a clerical or arithmetical error.

I have considered the submissions made by the learned counsel for the petitioner, learned Public Prosecutor for the State and have also perused the judgment passed by the trial Court dated 12.01.99 and 13.01.99.

It is not a case of review or revision but the trial Court has committed an error in dismissing the appeal for non-prosecution and further corrected the error by restoring the same. No doubt the trial Court has no power to dismiss the same for non-prosecution and also no power of restoration but the appeal is heard on merit and disposed of.

So far as illegality committed by the trial Court is concerned, it is nothing but ignorance of law and the trial Court should not conduct the trial in the

manner as in the instant case is conducted but having gone through the impugned judgment dated 15.01.99 by which the accused-respondents have been acquitted and upon careful perusal of the record, it appears that no offence under Section 323 IPC is made out against the accused and they are entitled to get the benefit of probation under Section 3 of the Probation of Offenders Act.

Thus, so far as acquittal order is concerned, no interference whatsoever is required by this Court and therefore, the revision petition to the extent of challenging the acquittal order passed by the Court below dated 15.01.99 fails and deserves to be dismissed.

Consequently, the revision petition stands dismissed.

Record be sent back forthwith.

**(K.S. RATHORE),J.**

/KKC/